

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 11-14

PETRA PET, INC. (a/k/a PETRAPPORT)

v.

**PANDA LOGISTICS LIMITED; PANDA LOGISTICS CO., LTD. (f/k/a PANDA
INT'L TRANSPORTATION CO., LTD.); and RDM SOLUTIONS, INC.**

INITIAL DECISION ON DEFAULT OF RDM SOLUTIONS, INC.

This Initial Decision¹ is a default decision against respondent RDM Solutions, Inc. ("RDM Solutions") which is being issued for the reasons explained below.

By complaint served on August 26, 2011, complainant Petra Pet, Inc. ("Petra Pet") alleges that respondent RDM Solutions, an ocean transportation intermediary, violated the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. § 41102(c), by failing to establish, observe, and enforce reasonable regulations and practices relating to or connected with receiving, handling, storing, and delivering complainant's shipments from China to the United States. Complaint at 3. Petra Pet seeks reparations of \$269,940.68 plus interest, attorney's fees, and other damages as appropriate. Complaint at 10-11.

The complaint also names Panda Logistics Limited and Panda Logistics Co., Ltd. (collectively "Panda") as respondents. On September 28, 2011, Panda filed its answer to the complaint and filed cross-claims for indemnification and contribution from RDM Solutions. Panda's Answer at 7-9 (Sept. 28, 2011); *see also* Panda's Amended Answer at 7-9 (Dec. 20, 2011). The proceeding between these remaining parties continues.

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

The Commission's rules require that RDM Solutions file its answer or otherwise respond to the complaint within twenty days after the date of service. 46 C.F.R. § 502.64(a). No answer has been filed to date. In addition, the parties were served an initial order dated August 29, 2011, which required a status report within thirty days. RDM Solutions failed to respond to this initial order.

A notice of default and order to show cause was issued on October 31, 2011, granting additional time to respond to the complaint and ordering RDM Solutions to show cause why a decision should not be entered against it. RDM Solutions was warned that if it failed to respond to the order to show cause by November 30, 2011, a default decision would be entered against it, in the amount of \$269,940.68 plus interest, attorney's fees, and other damages as appropriate. RDM Solutions failed to respond to the order to show cause.

On February 13, 2012, complainant Petra Pet and respondent Panda filed a joint motion for default judgement against RDM Solutions. The parties had previously indicated in joint status reports that "[c]ounsel for Panda and counsel for Petra Pet have conferred on this matter and believe that entry of a default judgment against RDM Solutions in this matter is warranted and would advance the resolution of the case." Joint Status Report at 2 (Jan. 12, 2012); *see also* Joint Status Report at 1 (Jan. 31, 2012). Respondent RDM Solutions has not filed a response to the motion for default judgment.

Discussion

Respondent RDM Solutions has repeatedly failed to respond in this proceeding by failing to file its answer to the complaint and failing to respond to two additional orders: the initial order and the notice of default and order to show cause. Under such circumstances, it is customary for the Commission as well as courts to find that a defaulting respondent has admitted the well-pled allegations both as to the specific violations of law alleged and as to the specific money damages alleged. *Bermuda Container Line Ltd. v. SHG Int'l Sales, Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 1998 WL 309055 (ALJ Mar. 24, 1998); *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871, 872 (ALJ 1993); *see also City of N.Y. v. Michalis Pawn Shop, LLC*, 645 F.3d 114 (2d Cir. 2011). Because RDM Solutions failed to participate, the decision does not have the benefit of a full development of facts and briefing.

In its complaint, Petra Pet alleges that each respondent is a non-vessel-operating common carrier and ocean transportation intermediary within the meaning of 46 U.S.C. §§ 40102(16) and 40102(19). Complaint at 3. Petra Pet alleges that the respondents violated section 10(d)(1), 46 U.S.C. § 41102(c), and Federal Maritime Commission regulations 515 and 520, 46 C.F.R. §§ 515, 520, by "systematic and egregious failures to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing and delivering Complainant's property." Complaint at 9.

Petra Pet alleges that RDM was paid freight amounts owing to Panda; that RDM's owner, Mario Ruiz, accepted those funds, but did not transmit those funds to Panda; that Mr. Ruiz failed to respond to emails or telephone calls; and that as a result of RDM Solution's failure to pay freight

charges owing to Panda, that Panda refused to provide freight releases without additional payments. Complaint at 4. Petra Pet describes its discussion and negotiations with Panda over delivery and release of the cargo, including re-shipping of seven containers diverted back to China while en route to the United States. Complaint at 4-9. Petra Pet ultimately received the cargo in June 2011. Complaint at 9. Petra Pet seeks \$269,940.68 for payments made to respondents, demurrage and storage costs, and attorney's fees to obtain release of the goods. Complaint at 10-11.

Pursuant to section 10(d)(1) a "common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." 46 U.S.C. § 41102(c).

Accepting the factual allegations of the complaint as true, RDM Solutions operated as an ocean transportation intermediary, agreed to transport shipments of goods from China to the United States, and accepted payment for the shipments. However, RDM Solutions failed to remit payment to Panda and disappeared with the funds. Moreover, RDM Solutions failed to communicate with Petra Pet regarding the shipments or to account for the payments. This conduct supports a finding that RDM Solutions failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with delivering property in violation of section 10(d)(1). *See, e.g., Panalpina Inc. v. Eastern Mediterranean Shipping Corp.*, 28 S.R.R. 525, 526 (ALJ 1998). Accordingly, the allegations demonstrate violations of the Shipping Act by RDM Solutions.

Damages

The complaint indicates that Petra Pet seeks \$269,940.68 for payments made to respondents, demurrage and storage costs, and attorney's fees to obtain release of the goods. Complaint at 10-11.


Pursuant to section 11(g) of the Shipping Act "the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees." 46 U.S.C. § 41305(b). Commission case law states that: "(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation." *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (1950); *James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist.*, 2003 WL 22067203 (Aug. 26, 2003).

The evidence demonstrates that as a consequence of the violations by RDM Solutions, Petra Pet has sustained \$207,977.18 in actual injury for shipping charges, storage, and demurrage costs, and additional payments to Panda. This amount includes re-shipping of seven containers diverted back to China while en route to the United States due to RDM Solution's failure to remit payment. Petra Pet is also entitled to interest running from November 24, 2010, to be calculated by the Commission when this judgement and decision become administratively final. *See* 46 C.F.R. § 502.253. In addition, the complainant may be eligible for attorney's fees, upon petition, pursuant to Commission Rule 254. 46 C.F.R. § 502.254.

The evidence does not support an actual injury award of additional damages for attorney's fees covering correspondence with Panda, the Federal Maritime Commission, and other parties to obtain release of goods at United States ports and release of seven containers diverted back to China. Typically, attorney's fees are not considered part of the actual damages claim. *Bernard & Weldcraft Welding Equip. v. Supertrans Int'l Inc.*, 29 S.R.R. 1348, 1350 (ALJ 1992); *see also Transworld Shipping (USA), Inc. v. FMI Forwarding (San Francisco), Inc.*, 2001 WL 1085436, at *7 n.11 (ALJ 2001); *Burlington Northern Railroad Co. v. M.C. Terminals, Inc.*, 26 S.R.R. 682, 698-99 (ALJ 1992). The circumstances here are not analogous to the "extremely unusual case" where such damages were awarded. *Bernard & Weldcraft*, 29 S.R.R. at 1350 (citing *Bloomers of Cal., Inc. v. Ariel Maritime Group, Inc.*, 26 S.R.R. 183 (1992)).

For the reasons stated above, it is hereby

ORDERED that an initial decision on default be entered against respondent RDM Solutions and that complainant Petra Pet be awarded \$207,977.18 plus interest from November 24, 2010, from respondent RDM Solutions as reparations for violations of the Shipping Act.



Erin M. Wirth
Administrative Law Judge